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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SEGUE ELECTRONICS, INC., et al., Plaintiffs and Appellants, v. JK YAMING INTERNATIONAL HOLDINGS, LTD., Defendant and Respondent.	B204326 (Los Angeles County Super. Ct. No. BC335918)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Reversed.

Susman Godfrey, David C. Marcus, Stephen E. Morrissey, Kalpana Srinivasan, and Suyash Agrawal for Plaintiffs and Appellants.

Wang, Hartmann, Gibbs & Cauley, Richard F. Cauley, and Peter O. Huang for Defendant and Respondent.

The issue raised by this appeal is whether defendant/respondent JK Yaming International Holdings, Ltd. (JK Yaming) was a party to a July 30, 2004 agreement between plaintiffs/appellants Segue Electronics, Inc. and Shine Capacitors, LLC (collectively, Segue) and several of JK Yaming's subsidiaries. The trial court found that the undisputed evidence established that JK Yaming was not a party to the agreement and entered summary judgment for it. We disagree. We conclude that there are triable issues of fact as to whether JK Yaming was a party to the agreement, and thus we reverse the grant of summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Parties

Segue Electronics and Shine Capacitors are American companies in the business of purchasing and distributing electronic components, including capacitors. Chris Chen is the president of Segue Electronics and the founder and chairman of Shine Capacitors.

JK Yaming is an investment holding company incorporated and registered under the laws of Singapore and listed on the Singapore stock exchange. In 2004, JK Yaming owned 96.92 percent of defendant Fujian Juan Kuang Yaming Electric Limited (Fujian), a Chinese company that manufactures and sells magnetic and electronic ballasts, ignitors, and lighting fixtures. JK Yaming also owned 25 percent of, and Fujian owned 65 percent of, defendant Anhui Juan Kuang Electric Co. Ltd. (Anhui), a Chinese company that produces and sells capacitors.[1] JK Yaming and Fujian also held significant shares in seven other Chinese manufacturing companies.[2] In a variety of public documents, JK

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[1] Fujian and Anhui are not parties to this appeal.

[2] These companies are Shanghai Juan Kuang Lighting Fixture Co. Ltd., Shanghai Juan Kuang Lighting Co., Ltd., Shanghai JK & YM International Trade Ltd., Fujian JK Wiring Systems Co., Ltd., Fujian Juan Kuang Wireharness Electric Limited, Fujian Min Hang Electronics Co., Ltd., and Shanghai Yuan Ya Lighting Engineering Co., Ltd.

Yaming referred to itself and its subsidiaries, including Fujian and Anhui, as "the Group" or "the JK Group."

JK Yaming has a large number of shareholders, including Juan Kuang (Pte) Ltd., which as of March 17, 2005, held approximately 200,000 of JK Yaming's 202,948,180 shares. JK Yaming is controlled by its board of directors, which includes Chen Min, who is one of JK Yaming's two executive directors and one of its nine directors. Chen Min is also Fujian's general manager.

II. The July Agreement

This appeal focuses on an agreement signed on July 30, 2004, by Chris Chen, on behalf of Segue, and Chen Min, on behalf of some or all of the JK entities (the July agreement). The July agreement purported to bind "Segue Electronics, Inc./Shine Capacitors LLC" and the "Juna Kunag [*sic*] group of companies and its affiliations ('JK')," defined in a footnote on page 1 of the agreement as "Juan Kuang (Pte) Ltd[.], Fujian Juan Kuang Yaming Electric Ltd., Anhui Juan Kuang Electric Co. Ltd. and their affiliates and investee companies." The July agreement provided that Segue would introduce "JK" to Aerovox Corporation, a company with which it was then doing business, "to negotiate an arrangement under which technology transfer is secured to assist JK in product quality assurance and improvement." It further provided that Segue would be JK's "exclusive territory distributor for the Americas to market, sell and service U.S. accounts." And, it provided, among other things, that "The signer of this agreement is authorized person and empowered to commit for the entities that are parties to the agreement as detailed in page 1 footnote." It was signed by Chris Chen for Segue and by Chen Min for "Anhui Juan Kuang Electric Ltd[.], Fujian Juan Kuang Yaming Electric Ltd. and affiliates."

Segue alleges that notwithstanding the terms of the July agreement, JK Yaming, primarily through Chen Min, secretly double-crossed Segue by making deals with other companies, including Phihong USA Corp and Phihong Technology Co., Ltd., for the sale and distribution of capacitors in North America. Segue further alleges that in violation of

the express terms of the July agreement, JK Yaming pursued a direct relationship with Aerovox Corporation.

III. The Present Litigation

Segue filed the present action alleging breach of the July agreement against JK Yaming, Fujian, Anhui, Phihong USA Corp., and Phihong Technology Co., Ltd. on June 30, 2005. The operative third amended complaint alleged that "[c]ontrary to their contractual and fiduciary obligations to cooperate with plaintiffs to build and expand a North American capacitor business," JK Yaming, Fujian, and Anhui "have failed to use Segue as their exclusive North American distributor, have interfered with and disrupted plaintiffs' pre-existing and prospective business relationships, and have deprived plaintiffs of opportunities to build and expand the successful business that was contemplated by the agreements. In fact, defendants had no intent to fulfill the promises they made to Segue as part of the joint venture, but rather used the agreements to capitalize on Segue's access to technical expertise and network of potential customers, while preventing Segue from entering into a lucrative business relationship with JK's key competitor."

The third amended complaint alleged 10 causes of action against JK Yaming: breach of contract (first and third causes of action); open book account (fourth cause of action); common counts (fifth cause of action); breach of fiduciary duty (sixth cause of action); fraud by concealment, misrepresentation, and false promise (seventh, eighth, and ninth causes of action); and intentional interference with contractual relations and prospective economic advantage (tenth and eleventh causes of action). It also asserted causes of action against Fujian, Anhui, and the Phihong defendants that are not relevant to this appeal.

JK Yaming moved for summary judgment. It asserted that it was not bound by the July agreement because (1) it was not named in the agreement, and (2) Chen Min was not authorized to sign on its behalf. Further, it asserted that it did not participate in the day-to-day operations of its subsidiaries and did not participate in the tortious conduct alleged

in the eighth through eleventh causes of action. Thus, it asserted, judgment should be entered in its favor.

Segue opposed the motion. It contended: (1) JK Yaming was an "affiliate" and "investee" of the named companies and, thus, was bound by the July agreement; (2) Chen Min had express, implied, and ostensible authority to bind JK Yaming; (3) Anhui and Fujian were agents of JK Yaming and, thus, JK Yaming could be held liable for their contractual obligations; and (4) JK Yaming was independently liable for the fraud and interference claims.

The trial court granted the summary judgment motion in its entirety, finding that there were no triable issues of fact as to whether JK Yaming was bound by the July agreement. It explained as follows:

"(1) JK Yaming is not named in that document as a party. Whatever the subjective intentions of Chris Chen the drafter for Segue, may have been, the signature block and the express capacity in which Chen Min signed did not include JK Yaming. The vague reference to 'affiliates' and 'investees' is insufficient in the absence of any evidence of mutual understanding and agreement that JK Yaming was to be bound.

"(2) The evidence from within JK Yaming is that Chen Min was not authorized to sign on behalf of JK Yaming, as opposed to on behalf of a subsidiary. The argument by Segue that he was so authorized rests on his title and assumptions as to his role within JK Yaming, and does not demonstrate a triable issue of fact. Moreover, the July Agreement itself does not support Segue's conclusion.

"(3) Segue relies heavily on the securities filings discussing the relationship between the various entitles in what could broadly be described as the JK Yaming group. The filings do not create a triable issue of fact. A fundamental problem is that none of those statements even begins to show that JK Yaming is in anything other than a parent-subsidiary relationship with the other entities. Unless the criteria in Sonora Diamond Corp. v. Superior Court (2000) 83 Cal.App.4th [523] are satisfied, the parent/subsidiary relationship is not enough to create liability. There is no competent evidence to show that

the formalities of corporate separateness are not observed, or that JK Yaming attempts to run day-to-day operations of its subsidiaries.

"(4) The notion that Chen Min has ostensible authority as an agent to bind JK Yaming also fails. The existence of ostensible authority must be established through the acts and declarations of the principal, not the acts and declarations of the agents. Pries v. American Indemnity Co. (1990) 220 Cal.App.3d 752. Here there is no evidence that JK Yaming ever held Chen Min (or any of its subsidiaries) out as its agent for entering into agreements."

The trial court entered judgment for JK Yaming on September 13, 2007, and notice of entry of judgment was served on October 12, 2007. Segue filed this timely appeal on December 6, 2007.

The case against Fujian and Anhui went to trial in October 2008. A jury found Anhui liable for breach of the July agreement and awarded Segue $3.9 million. It also found that Fujian breached the July agreement, but it did not award Segue any additional damages. It found Segue liable on Anhui's cross-complaint and awarded Anhui $40,000.

STANDARD OF REVIEW

The standard of review for summary judgment is well established. The motion "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A moving defendant meets its burden of showing that a cause of action has no merit by establishing that one or more elements of a cause of action cannot be established or that there is a complete defense. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850; *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1196.)

We independently review an order granting summary judgment, viewing the evidence in the light most favorable to the nonmoving party. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *Lackner v. North, supra*, 135 Cal.App.4th at

p. 1196.) To perform our independent review of the evidence, "we apply the same three-step analysis as the trial court. First, we identify the issues framed by the pleadings. Next, we determine whether the moving party has established facts justifying judgment in its favor. Finally, if the moving party has carried its initial burden, we decide whether the opposing party has demonstrated the existence of a triable, material fact issue." (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1438.)

In determining whether there are triable issues of material fact, we consider all the evidence set forth by the parties, except that to which objections have been made and properly sustained. (Code Civ. Proc., § 437c, subd. (c); *Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 334.) We accept as true the facts supported by plaintiff's evidence and the reasonable inferences therefrom (*Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 148), resolving evidentiary doubts or ambiguities in plaintiff's favor (*Saelzler v. Advanced Group 400*, *supra*, 25 Cal.4th at p. 768).

DISCUSSION

I. First Cause of Action (Breach of Contract)

The first cause of action asserts breach of the July agreement. In its motion for summary judgment, JK Yaming asserts that (1) it was not a party to the July agreement, and (2) in any event, there is no evidence that Chen Min had authority to bind it. Segue responds that there are triable issues as to (1) whether JK Yaming is a party to the July agreement, (2) whether Chen Min had express, implied, and ostensible authority to bind JK Yaming, and (3) whether Fujian and Anhui are alter egos of JK Yaming. We address these issues below.

A. There Is a Triable Issue of Fact as to Whether JK Yaming Was a Party to the July Agreement

"In interpreting the contract, we must 'give effect to the mutual intention of the parties as it existed' at the time the contract was executed. (Civ. Code, § 1636.) Where

contract language is clear and explicit and does not lead to absurd results, we normally determine intent from the written terms alone. (*Id*., §§ 1638, 1639.) Those terms are to be understood in their ordinary and popular sense, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage. (*Id*., § 1644.) 'If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.' (*Id*., § 1649.)" (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 831-832.)

"The law imputes to a person an intention which corresponds to the reasonable meaning of his or her words and acts. Thus, where a person's words or acts, judged by a reasonable standard, manifest an intent to agree to a certain matter, that agreement is established, regardless of what may have been the person's real but unexpressed state of mind on the subject. (*Winet v. Price* [(1992)] 4 Cal.App.4th [1159,] 1172; *Edwards v. Comstock Insurance Co*. [(1988)] 205 Cal.App.3d [1164,] 1169; *Crow v. P.E.G. Construction Co., Inc*. (1957) 156 Cal.App.2d 271, 278-279.)" (*Brinton v. Bankers Pension Services, Inc*. (1999) 76 Cal.App.4th 550, 560.) In contrast, a party's undisclosed intent "is simply inadmissible." (*Ibid.*)

If contractual language is ambiguous, the court may consider in addition to the contract's plain language extrinsic evidence of the parties' intent. (*Winet v. Price*, *supra*, 4 Cal.App.4th at p. 1165.) "The test of whether parol evidence is admissible to construe an ambiguity is not whether the language appears to the court to be unambiguous, but whether the evidence presented is relevant to prove a meaning to which the language is 'reasonably susceptible.' (*Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co*. (1968) 69 Cal.2d 33, 37.)" (*Winet v. Price*, at p. 1165.) When a party contends the language of a contract is ambiguous, the trial court provisionally receives all credible evidence concerning the parties' intentions. (*Ibid*.) If in light of the extrinsic evidence the language is reasonably susceptible to the interpretation urged, then the extrinsic evidence is admitted to aid in interpreting the contract. (*Wagner v. Columbia Pictures Industries, Inc*. (2007) 146 Cal.App.4th 586, 589-590.)

By its plain language, the July agreement purported to bind "Segue Electronics, Inc./Shine Capacitors LLC" and the "Juna Kunag [*sic*] group of companies and its affiliations ('JK')," defined in a footnote as "Juan Kuang (Pte) Ltd[.], Fujian Juan Kuang Yaming Electric Ltd., Anhui Juan Kuang Electric Co. Ltd. and their affiliates and investee companies." It was signed by Chris Chen for Segue and by Chen Min for "Anhui Juan Kuang Electric Ltd[.], Fujian Juan Kuang Yaming Electric Ltd. and affiliates."

JK Yaming contends that it is entitled to summary adjudication of the breach of contract cause of action because "[i]t is obvious on its face" that it is not a party to the July agreement. In support, it notes that "[i]ts name appears nowhere on the document and there is no place for anyone to sign on [JK Yaming's] behalf." Further, "had the parties intended to bind [JK Yaming] to the purported July Agreement, they could easily have done so by expressly naming [JK Yaming] in the document and providing a signature block for [JK Yaming] to execute." Because the parties did not do so, JK Yaming contends that it could not be bound by the July agreement.

We do not agree. Although it indisputably is true that the July agreement does not identify JK Yaming by name, by its plain language it purports to bind "affiliates" and "investee companies" of Fujian, Anhui, and Juan Kuang (Pte) Ltd. JK Yaming has not introduced any evidence that it is not an "affiliate" or an "investee" of the three named companies. Thus, it has not met its summary judgment burden of showing that the first cause of action "'has no merit'" because "'one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action.'" (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 849.)

Moreover, even if JK Yaming had introduced evidence to the contrary, we nonetheless would find that there are triable issues of material fact as to whether JK Yaming is an "affiliate" or "investee" of the named parties and, thus, is bound by the July agreement. The agreement does not define "affiliate," but Segue demonstrated in its summary judgment opposition that the plain meaning of that word includes subsidiary, sibling, *and parent* corporations. For example, Black's Law Dictionary defines

"affiliate" as "A corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation." (Black's Dictionary (7th ed. 1999) p. 59, col. 1.) The Corporations Code definition is similar; it provides in section 150 that "A corporation is an 'affiliate' of, or a corporation is 'affiliated' with, another specified corporation if it directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the other specified corporation." (See also *Morey v. Vannucci* (1998) 64 Cal.App.4th 904 [meaning of "affiliated entities" was properly submitted to jury; rejecting party's contention that as a matter of law, "affiliated entities" could mean only a wholly owned and controlled corporate subsidiary].) Accordingly, on its face "affiliate" includes "related" corporations, including parent corporations.

It is undisputed that JK is the parent corporation of both Fujian and Anhui. Ang Chiong Chai's declaration, submitted by JK in support of its motion for summary judgment, concedes that JK Yaming "owns 96.92% of the stock of defendant [Fujian], which in turn owns 65% of defendant [Anhui]. [JK Yaming] owns 25% of the stock of Anhui directly." Segue's evidence demonstrates that this was the case in 2004 as well: JK Yaming's 2004 annual report, which Segue submitted in opposition to the motion for summary judgment, stated that in 2004 JK Yaming owned 96.92 percent of Fujian and 25 percent of Anhui, and that Fujian owned 65 percent of Anhui. There thus is a triable issue that JK Yaming is an "affiliate" of both Fujian and Anhui. The trial court erred in concluding otherwise.

There also is evidence that JK Yaming is an "investee" of Juan Kuang (Pte) Ltd. The plain meaning of "investee" is a "company whose debt or shares are being purchased." (McGraw-Hill Ryerson, Fundamental Accounting Principles (10th Canadian ed.) vols. 1-3, ch. 18.) Segue's summary judgment evidence demonstrated that Juan Kuang (Pte) Ltd. had precisely this relationship with JK Yaming. Indeed, the evidence established that as of March 17, 2005, Juan Kuang (Pte) Ltd. held approximately 200,000 of JK Yaming's 202,948,180 shares. Accordingly, there is a triable issue that JK Yaming is an "investee" of Juan Kuang (Pte) Ltd.

Finally, there is evidence that JK Yaming held itself out as part of a "group of companies" that also included Fujian and Anhui. For example, JK Yaming's April 2005 circular to shareholders defined the "Group" or the "JK Yaming Group" as "[t]he Company, its subsidiaries and associated company(ies)." It defined the "Company" as "JK Yaming International Holdings Ltd." JK Yaming's prospectus, dated July 26, 2001, defined the "Group" as "[t]he proforma group of companies comprising our Company and our subsidiaries," and it defined "Group Companies" to include both JK Yaming and Fujian. There is evidence that Chen Min used similar language in his negotiations with Segue. For example, Chris Chen stated in his declaration that in May 2004, "I personally met with Chen Min. During this meeting, I learned Chen Min was one of the top executives in *the JK Group*, which included a publicly traded company with many entities and affiliates (collectively, 'JK' or 'JK Group'). I also learned that another JK Yaming subsidiary, Anhui Juan Kuang Electric Co. Ltd. ('Anhui JK'), made capacitors in China, that some of these had already been sold in North America, and that *the JK Group* wanted to expand further the sale of its capacitors into the North America. Chen Min and I discussed how Segue could help *the JK Group* grow the sale of its products in North America . . . . [¶] . . . [¶] When negotiating with Chen Min, I believed that Chen Min spoke on behalf of *the entire JK Group* when he suggested the possibility of a broader future relationship. Chen Min represented to me that he was one of the founders of *the JK Group* and that he had worked on taking it public. He also represented to me that he was involved in the overall management of *the JK Group* and was responsible for making significant decisions for all of JK." (Italics added.)

For all of these reasons, we conclude that there is a triable issue of material fact as to whether JK Yaming was a party to the July agreement.

B. There Is a Triable Issue of Fact as to Whether Chen Min Had Authority to Bind JK Yaming to the Terms of the July Agreement

JK Yaming correctly asserts that even if the July agreement purported to include it, it was entitled to summary judgment in the absence of evidence that Chen Min had

authority to bind it to the agreement's terms.[3] A principal is bound by the acts of its agent "'within the scope of his actual authority (express or implied) or his apparent or ostensible authority; or by unauthorized acts ratified by the client.' [Citations.]" (*Blanton v. Womancare, Inc*. (1985) 38 Cal.3d 396, 403; *Knabe v. Brister* (2007) 154 Cal.App.4th 1316, 1323.) Thus, we consider the evidence of Chen Min's actual (express or implied) and ostensible authority.

1. Actual Authority

Actual authority "is such as a principal intentionally confers upon the agent." (Civ. Code, § 2316.) In support of its motion for summary judgment, JK Yaming introduced evidence that Chen Min lacked actual authority to bind the company to the terms of the July agreement. The evidence included the declaration of Chen Min, which stated that "I do not have and have never had the right to make decisions . . . or form contracts for [JK Yaming]" and "I do not have and have never had signing authority for [JK Yaming]. I have never represented to anyone, including the Plaintiffs, that I have such authority nor has anyone else made such representations. Indeed, I do not have signing authority for any company in which the Holding Company has an interest other than Fujian." It also included the declaration of Ang Chiong Chai, in which he stated that "I have sole signing authority for [JK Yaming] except as to matters where the approval of [JK Yaming's] Board of Directors is required. Once board approval is obtained, I am the sole executive authorized to sign contracts on behalf of [JK Yaming]. Chen Min is not, nor has he ever been, authorized to sign any contracts on behalf of [JK Yaming]." Ang Chiong Chai further declared that "Chen Min did not have authority to sign the so-called

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[3] JK Yaming provides the following "illustrative example": "[T]he Appellants could have drafted the purported July Agreement to reference the Ford Motor Company and related companies, and later claim that Ford Motor Company and every company that had the slightest relationship to Ford was bound. It would be ludicrous to suggest that merely referencing the Ford Motor Company and related companies would create a binding relationship. No signatory would be authorized to sign for Ford Motor Company or its related companies, and Ford Motor Company and its related companies did not obtain any direct benefit from the purported July Agreement."

July Agreement on behalf of [JK Yaming]." This evidence was sufficient to satisfy JK Yaming's summary judgment burden and to shift the burden of production to Segue.

In opposition to summary judgment, Segue introduced evidence that Chen Min was one of two executive directors of JK Yaming, and as such held a management position second in importance only to the executive chairman, Ang Chiong Chai. Further, Segue pointed to paragraph 3.1.2 of the July agreement, which stated that "The signer of this agreement is authorized person and empowered to commit for the entities that are parties to the agreement as detailed in page 1 footnote."

We conclude, contrary to the trial court, that Segue demonstrated a triable issue of material fact as to Chen Min's actual authority to bind JK Yaming. As an executive officer of the corporation, Chen Min """"is something more than an agent. He is the representative of the corporation itself."""" (*Jeppi v. Brockman Holding Co.* (1949) 34 Cal.2d 11, 17; see also *Monteleone v. Southern California Vending Corp.* (1968) 264 Cal.App.2d 798, 806 [same]; *Moore v. Phillips* (1959) 176 Cal.App.2d 702, 709 [same].) Accordingly, a trier of fact reasonably could conclude that Chen Min spoke for the corporation when he represented in the July agreement that he had authority to commit JK Yaming to the agreement's terms. Further, that authority would be consistent with that typically granted to a person in Chen Min's position in JK Yaming's corporate hierarchy. (See, e.g., *Pac. Concrete Products Corp. v. Dimmick* (1955) 136 Cal.App.2d 834, 838 ["From the facts that he was the corporation's vice-president and general manager, and that he attended to and managed all its affairs both before and after it became embarrassed from financial difficulties, the trial court had the right to infer that he possessed full authority to act for and bind it on the occasion of the making and performance of the oral agreement"]; *Monteleone v. Southern California Vending Corp*., *supra*, 264 Cal.App.2d at p. 806 ["Ausmus was both general manager and vice president, and it is well established that the general manager has implied authority to bind the corporation and do in the transaction of its ordinary affairs whatever the corporation itself could do within the scope of its powers. [Citations.] Therefore, Ausmus completed with full authority the lease transaction that he preliminarily entered without such power."].)

Finally, a trier of fact reasonably could conclude that as an executive director, Chen Min was familiar with the corporate bylaws and with the extent of his own signing authority. Accordingly, there was a triable issue of material fact as to Chen Min's actual authority to bind JK Yaming.

2. Ostensible Authority

"The Civil Code recognizes that agency, and the authority conferred upon an agent, may be ostensible as well as actual (§§ 2298 and 2315). 'An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.' (§ 2300.) 'Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.' (§ 2317.) 'A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof.' (§ 2334.)" (*Associated Creditors' Agency v. Davis* (1975) 13 Cal.3d 374, 399-400.)

"'It is elementary that there are three requirements necessary before recovery may be had against a principal for the act of an ostensible agent. The person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one; such belief must be generated by some act or neglect of the principal sought to be charged; and the third person in relying on the agent's apparent authority must not be guilty of negligence. [Citations.]'" (*Associated Creditors' Agency v. Davis*, *supra*, 13 Cal.3d at pp. 399-400.)

"Although it is established that ostensible authority can be created only by the acts or declarations of the principal, not by those of the agent (*Dickens v. Bunker* (1959) 169 Cal.App.2d 383, 388), the principal need not have been in direct contact with the third party; the manifestation of the principal may be to the community at large, and may consist of appointing the agent to a particular position. (See Rest.2d Agency, § 8, p. 31, and § 27, pp. 103-104.) '[W]here . . . an agent is by his principal put in charge of a

business as the apparent manager thereof, he is clothed with apparent authority to do all things that are essential to the ordinary conduct of such business at that place, and third persons, acting in good faith, and without notice of or reason to suspect any limitations on his authority, are entitled to rely on such appearance. . . .' (*Henry Cowell etc. Co. v. Santa Cruz etc. Bank* (1927) 82 Cal.App. 519, 524.) [Italics omitted.] 'The theory of ostensible agency is that the agent's position facilitates the consummation of the fraud, in that from the point of view of the third person, the transaction seems regular on its face and the agent appears to be acting in the ordinary course of the business confided to him.' (*Walsh v. Hooker & Fay* (1963) 212 Cal.App.2d 450, 456.) [Italics omitted.]" (*Meyer v. Ford Motor Co*. (1969) 275 Cal.App.2d 90, 102 (*Meyer*).)

In support of its motion for summary judgment, JK Yaming asserted that the undisputed facts show Chen Min was not its ostensible agent because JK Yaming "never represented to Segue that Chen Min was authorized to act on its behalf; indeed, there is no evidence that [JK Yaming] ever made any representations to Segue at all. . . . [¶] . . . Plaintiffs will not be able to present any evidence showing that [JK Yaming] ever made any statement to Plaintiffs that Chen Min had signing authority as to the July Agreement (or any agreement at all)." We believe, as the trial court did, that this evidence was sufficient to satisfy JK Yaming's summary judgment burden.

In response, Segue submitted evidence that JK Yaming held itself out to the public as part of an integrated "Group" of companies in which Chen Min played an important role. That evidence included the following:

(1) In public documents, JK Yaming consistently held itself out as part of a "Group" of companies that engaged in significant manufacturing activity in China, including the manufacture of capacitors. For example, JK Yaming's July 26, 2001 prospectus represented that "Our Company" had a head office in Singapore and "production facilities . . . located in Nanping, Fuzhou and Anhui in PRC." Further, it said that "we" are principally engaged in three main activities, one of which is "the manufacture and sale of electrical lighting products, i.e.[,] the ballasts, ignitors, capacitors, lamps and lighting fixtures." And, the prospectus asserted that "we" are "a

group of seven companies" that collectively "employed a total of 1,350 staff and occupied a total production site area of 38,000 square meters in PRC."[4]

(2) JK Yaming represented in public documents that Chen Min was one of two executive directors of JK Yaming, and as such held a management position second in importance only to the executive chairman, Ang Chiong Chai. Further, the company represented that Chen Min "is responsible for the management of our PRC operations" and "was the pioneer of our research and development division, which has developed various technologically advanced electrical lighting products that have won various awards from the Chinese authorities." It also represented that "[o]ur future business development is dependent on our Executive Chairman, Mr. Ang Chiong Chai[,] *and our Executive Director, Mr. Chen Min*," who are "instrumental to our continued growth and expansion." (Italics added.)

(3) JK Yaming allowed executives to have significant roles both in its own management and in the management of its subsidiaries. Of particular relevance to the present appeal, it permitted Chen Min to serve both as executive director of JK Yaming and as general manager of Fujian. Further, it provided Chen Min with a business card, which he presented to Segue prior to signing the July agreement, that identified him both as the executive director of JK Yaming and the general manager of Fujian.

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[4] These public representations are relevant because "[w]hile it is true that the ostensible authority of an agent cannot be based solely upon the agent's conduct, *see Kaplan* [*v. Coldwell Banker Residential Affiliates, Inc*. (1997) 59 Cal.App.4th 741, 747], it is not true that the principal must make explicit representations regarding the agent's authority to the third party before ostensible authority can be found." (*C.A.R. Transportation Brokerage Co., Inc. v. Darden Restaurants, Inc*. (9th Cir. 2000) 213 F.3d 474, 480.) Thus, for example, in *Kaplan, supra*, 59 Cal.App.4th 741, the court found an ostensible agency based entirely on Coldwell Banker's public representations regarding its relationship with a defendant brokerage. The court explained: "Here Coldwell Banker made no specific representations to appellant personally. It did, however, make representations to the public in general, upon which appellant relied. We understand why appellant, and members of the public generally, might believe that Coldwell Banker 'stood behind' Marsh's realty company. The venerable name, Coldwell Banker, the advertising campaign, the logo, and the use of the word 'member' were and are designed to bring customers into Coldwell Banker franchises." (*Id*. at p. 747.)

(4) JK Yaming sent Chen Min to negotiate an exclusive distributorship and technology transfer agreement with Segue without clarifying which portion of the JK "Group" he was representing or what the extent of his authority was.

(5) Chen Min made a series of representations to Chris Chen of Segue prior to signing the July agreement.[5] Specifically, according to Chris Chen's declaration, Chen Min represented that he was one of the top executives in the JK Group, which included a publicly traded company with many entities and affiliates. Chen Min also told Chris Chen that he was one of the founders of the JK Group and that he had worked on taking it public. Finally, he said that he was involved in the overall management of the JK Group and "was responsible for making significant decisions for [the Group]."

This evidence was sufficient to create a triable issue of fact that when Chen Min entered the July agreement, he did so as the ostensible agent of JK Yaming, as well as of Fujian and Anhui. It is undisputed that JK Yaming consistently represented itself to the public as part of a group of companies that engaged in manufacturing activities, including the manufacture of capacitors. Indeed, a reasonable trier of fact could conclude on the basis of the summary judgment evidence that JK Yaming's public face was such that it would have been difficult for a third party such as Segue to discern with which parts of the "group" it was doing business. This difficulty was compounded in the present case by the facts that Chen Min held important positions in both JK Yaming and Fujian and, at the beginning of the negotiations that preceded the July agreement, he presented Segue representatives with a business card identifying both positions. Moreover, neither Chen Min nor any other JK Yaming representative ever clarified in what capacity Chen Min signed the July agreement. Under these circumstances, we believe the summary

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[5] It is well established that the ostensible authority of an agent cannot be based solely upon the agent's conduct. We nonetheless believe that Chen Min's representations to Segue are relevant in the present case because, as we have said, the executive officer of a corporation """is something more than an agent. He is the representative of the corporation itself."""" (*Jeppi v. Brockman Holding Co.*, *supra*, 34 Cal.2d at p. 17.) Accordingly, as executive director, Chen Min arguably spoke as JK Yaming itself, not merely as its agent.

judgment evidence was sufficient to create a triable issue that Chen Min signed the July agreement as the ostensible agent of JK Yaming, as well as of Fujian and Anhui.

We also reject JK Yaming's suggestion that even if Chen Min had some measure of ostensible authority to represent JK Yaming, he could not bind it to the terms of the July agreement. As we have said, "'where . . . an agent is by his principal put in charge of a business as the apparent manager thereof, he is clothed with apparent authority to do all things that are *essential to the ordinary conduct of such business* at that place, and third persons, acting in good faith, and without notice of or reason to suspect any limitations on his authority, are entitled to rely on such appearance. . . .' (*Henry Cowell etc. Co. v. Santa Cruz etc. Bank*[, *supra*,] 82 Cal.App. 519, 524.) (Italics [added].) 'The theory of ostensible agency is that the agent's position facilitates the consummation of the fraud, in that from the point of view of the third person, the transaction seems regular on its face and the agent appears to be acting *in the ordinary course of the business confided to him*.' (*Walsh v. Hooker & Fay*[, *supra*,] 212 Cal.App.2d 450, 456.) (Italics [added].)" (*Meyer*, *supra*, 275 Cal.App.2d at p. 102.)

The court applied these principles in *Meyer*, *supra*, 275 Cal.App.2d 90, to conclude that substantial evidence supported a jury's finding of an agent's ostensible authority. There, the plaintiff, a former Ford Motor Company dealer, sought damages for the termination of his agency by Ford. Among other things, he alleged breach of an oral agreement by several Ford representatives that if plaintiff agreed voluntarily to give up his dealership, Ford would help him find a buyer and the sales price would be sufficient to satisfy his existing indebtedness. (*Id*. at p. 98.) A jury found that Ford breached this oral agreement and Ford appealed, contending that there was no evidence that any of its agents had either actual or ostensible authority to promise plaintiff that he would not be hurt financially on the sale and the sale price would be sufficient to satisfy his existing indebtedness. (*Id*. at p. 101.) The court disagreed. It noted that although a manager is clothed with apparent authority to do only those things that are essential to the ordinary conduct of a business, "such a characterization gives no meaningful guidelines to the third party who must gauge whether the agent's words or deeds in fact typify the

'ordinary' conduct of the business. This is especially so where, as here, the principal is a distant, prestige corporation which carries on massive activities in the third party's geographic area." (*Id*. at p. 102.) It concluded: "The circumstances of this case were such as to constitute a holding out to plaintiff that Ford's agents had authority to make all the promises. The . . . promise of [the regional sales manager] and the San Jose district personnel was clearly made during their prosecution of a matter ordinarily entrusted to them by Ford—the obtaining of a signed 'Request for Assistance in Selling.' Substantial evidence showed that this . . . promise was made for the direct purpose of producing that result, an object of benefit to, and desired by, Ford. Hence, the promise was unquestionably within the scope of the agents' ostensible authority." (*Id*. at p. 103.)

The present case is analogous to *Meyer, supra,* 275 Cal.App.2d 90. As in *Meyer*, the ostensible principal here is a "distant . . . corporation" whose internal command structure could not easily be discerned by a third party. (*Id*. at p. 102.) Further, as in *Meyer*, the July agreement was signed following negotiations that JK Yaming apparently sent Chen Min to conduct and that clearly benefited JK Yaming. Finally, Chen Min's important position in the corporate hierarchy—according to both the company's public statements and Chen Min's private representations to Chris Chen, Chen Min occupied the position of executive director, was second in importance only to the executive chairman, and was responsible for the management of the corporation's operations in China—made it reasonable to assume that he was empowered to enter contracts on the corporation's behalf. In these circumstances, a trier of fact could reasonably conclude that there was a holding out to Segue that Chen Min had authority to bind the corporation to the July agreement. (*Id*. at p. 103; see also *Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 134-135 [individual who was corporation's vice president, member of the executive committee and manager of sales had ostensible authority to bind corporation to contract, "despite any secret limitations or defective authorization"].)[6]

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[6] Because we have concluded that there are triable issues of fact concerning Chen Min's actual and ostensible agency, we do not consider another issue raised by the

For all of these reasons, we conclude that the trial court erred in granting summary judgment of the first cause of action for breach of contract.

II. Third, Fourth, Fifth, Sixth, and Seventh Causes of Action (Breach of Contract, Open Book Account, Common Counts, Breach of Fiduciary Duty, and Fraud by Concealment)

JK Yaming sought summary adjudication of the third through seventh causes of action (breach of contract, open book account, common counts, breach of fiduciary duty, and fraud by concealment) on the same basis discussed above, i.e., that there was no triable issue of fact that JK Yaming was a party to the July agreement. Because we have rejected that contention, we find that there are triable issues of fact as to the third through seventh causes of action as well.

III. Eighth, Ninth, Tenth, and Eleventh Causes of Action (Fraud By Misrepresentation and False Promise, Intentional Interference With Contractual Relations, and Intentional Interference With Prospective Economic Advantage)

JK Yaming also sought summary adjudication of the eighth through eleventh causes of action (fraud by misrepresentation and false promise, intentional interference with contractual relations, and intentional interference with prospective economic advantage). It asserts that these causes of action are based upon a common premise: that JK Yaming made active misrepresentations and/or false promises to induce Segue to enter the July agreement. It further contends that there are no triable issues of fact as to these causes of action because JK Yaming does not run the day-to-day operations of Fujian and Anhui and thus cannot be held liable for its torts; JK Yaming did not enter the July agreement or participate in its negotiations; and any specific statements allegedly

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summary judgment motion, namely, whether JK Yaming is the alter ego of Fujian or Anhui.

made by Chen Min, Wen Hai Bo, or other individuals were made while "wearing the hat" of an employee of either Fujian or Anhui, and not on behalf of JK Yaming.

We conclude that JK Yaming has not met its summary judgment burden of establishing the absence of triable issues of material fact as to these causes of action. As discussed above, there are triable issues as to whether JK Yaming was a party to the July agreement. Further, while JK Yaming has introduced some evidence that it was Chen Min's intention to represent only Fujian in his interactions with Segue, there is no evidence that he ever communicated that intention to Segue's representatives.

DISPOSITION

The summary judgment for JK Yaming is reversed. Segue shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.